

GJBK180028112023



Presented on : 30-10-2023

Registered on : 30-10-2023

Decided on : 10-03-2026

Duration : 2 years, 4 months, 11 days

**IN THE COURT OF
6th ADDL DISTRICT JUDGE AT DEESA, BANASKANTHA
Presided Over by S.M.KANABAR**

MACP/116/2023

Exhibit No.:52

Petitioner:

**1: DINABEN WD/O BHARATKUMAR TRIVEDI HEIR OF LATE
BHARATKUMAR PRATAPCHAND TRIVEDI**

Age: 41 Occupation :

Address: RAMSAN, TA. DEESA, DIST-BANASKANTHA

2: NIVIDBHAI @ NIVIDPRASAD BHARATBHAI TRIVEDI

Age: 22 Occupation :

RAMSAN TA. DEESA DIST-BANASKANTHA

3: PUJABEN BHARATKUMAR TRIVEDI

Age: 24 Occupation :

RAMSAN TA. DEESA DIST-BANASKANTHA

4: JINALBEN BHARATBHAI TRIVEDI

Age: 26 Occupation :

RAMSAN TA. DEESA DIST-BANASKANTHA

5: BHUMIKABEN BHARATBHAI TRIVEDI

Age: 19 Occupation :

RAMSAN TA. DEESA DIST-BANASKANTH

VERSUS

Respondent:

1:LALJIJI CHHAGANJI THAKOR

Age: 0 Occupation :

Address: GADH,TA.PALANPUR,DIST-B.K

2:ISMAILBHAI IBRAHIMBHAI UMATIYA

Age: 0 Occupation :

PUNJPUR TA.DANTA DIST-BANASKANTHA

3:THE NEW INDIA INSURANCE COMPANY LTD

Age: 0 Occupation :

H.K.TOWER HANUMANTEKRI ABUHIGHAY PALANPUR

4:THE ORIENTAL INSURANCE COMPANY LTD

Age: 0 Occupation :

FIRST FLOOR SANSKRUT SHOPPING CENTER
OPP-INCOMTEX OFFICE ABU HIGHWAY PALANPUR
TA PALANPUR DIST-B.K.

Advocate for Petitioner: S M SWAMI

Advocate for Respondent: **D K KHARDOSANIYA & M M NAI**

JUDGMENT

(Delivered on 10-3-2026)

**APPLICATION FOR GETTING THE COMPENSATION UNDER
SECTION 166
OF THE MOTOR VEHICLES ACT, 1988.**

- (1) While the preferring the petition, it was filed for the compensation of Rs.36,00,000/- along with interest at the rate of 18% per annum with cost, from the Opponents stating the death of the Bharatkumar Pratapchand Trivedi in the accident caused on Dtd. 4/4/2022 at about 1230 in the noon near Ramsan Village sim on Patelpura Road due to rash and

negligent driving of Tenkar No. GJ 08 W 0615 when the deceased was riding in motor cycle No.GJ 08 AA 8131.

(2) The notices was served on opponents. Opponent No.3 filed his written statement vide Ex.7 and denied the contention of petition with the defence of effective and valid driving licence of both the vehicles as well as raised the issue of negligence of both the vehicles and asked to exonerate it from the liability.

* Opponent No.4 filed its written statement vide Ex.11 and denied its liability stating the defence of effective and valid driving licence of the deceased and its liability as there was no insurance of driver / owner and asked to exonerate from the liability.

(3) The matter is decided on following issues framed at Ex/13.

:: ISSUES FOR DETERMINATION ::

1	Whether applicants prove that alleged accident caused through the rash and negligent driving of the vehicle alleged in the petition?
2	Whether applicants prove that alleged death caused due to the accident?
3	Whether applicants are entitled to get compensation from the opponents? If yes then what amount is the proper compensation for the applicants?
4	What order and award?

- (4) My findings, arrived at, of the above stated issues, are as under :

-: **FINDINGS** :-

1	Partly in Affirmative as per final order.
2	Partly in Affirmative as per final order.
3	Partly in Affirmative as per final order.
4	As per final order.

- (5) **EVIDENCE OF CLAIMANT** :

S./N.	PARTICULARS	Exh. /Mark
1	Deposition of Dinaben Bharatkumar	16
2	Complaint	17
3	Panchnama of crime spot	18
4	Inquest Panchnama	19
5	PM Report	20
6	RC Book of Vehicle No.GJ 08 W 0615	21
7	Insurance Policy	22
8	RC Book of Vehicle No.GJ 08 AA 8131	23
9	Insurance Policy	24
10	Adhar Card of clamants	25
11	Pan Card of clamants	26
12	Pass-book	27
13	Charge-sheet	28
14	School Leaving Certificate	29
15	Income Tax Return	30
16	Income Tax Return	31
17	Income Tax Return	32

18	Driving Licence of deceased	35
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(6) Opponent's Evidence :-

S./N.	PARTICULARS	Exh. /Mark
1	Report of No driving Licence before driver of offending vehicle	42
2	Insurance Policy	43
3	Evidence of Notice Service Evidence and notice	44-47

(7) Argument :-

A. On the side of claimant:-

- (i) Learned advocate of claimant side filed written argument vide Ex.51. He narrated the fact of petition as well as evidence filed before the tribunal. He narrated the monthly income of deceased as of Rs.30,000/- and relied on the income tax return filed under Ex.30 to 32. He calculated the compensation and asked to allow the amount of Rs.49,87,500/-.

B. On the side of Opponents -

- (i) Learned advocate of opponent No.3 filed written argument. He narrated the fact of case and evidence filed and alleged 50%-50% negligence of both the driver as the parts of both the vehicles were lied on road and both the vehicles were having damage on front side. He further raised the issue of valid licence before the opponent No.1 and relied on the decision of AIR 2009 SC 208 and 2008 (8) SCC 165 and 1996

ACJ 253 SC and 1997 ACJ 1065 SC and 2002 (2) GLH 50 and 2008 ACJ 733 (SC) and 2023 ACJ 2330 SC and asked to pass the order.

:- REASONS :-

Issues No.1 to 3 :

- (8) Since the evidence, all documentary and oral, is germane and common to all issues, all the issues are dealt with together for the sake of convenience.

Issue of negligence and issue of contributory negligence :-

- (9) The complaint of rash and negligent driving was filed on tanker No.GJ 08 W 0615 and it was filed on record vide Ex.17. The charge-sheet was filed on opponent No.1 and it was on record vide Ex.28. Therefore, the negligence of opponent No.1 is proved and being the owner of vehicle opponent No.2 is also responsible.

Issue of liability of both insurance company.

- (10) The opponent No.3 is the insurance company of offending vehicle. As per the evidence of Ex.42, the driver of offending vehicle was not holding driving licence.

* In 2003 ACJ 611 (S.C.) [[United India Insurance Co. Ltd., v. Lehu and others](#)] it is observed as follows: "If the driver had no valid driving licence at the time of the accident, the insurance company is not liable to pay the compensation amount and however in the interest of justice and to safeguard the fundamental rights of the victim, the insurance company is directed to pay the compensation amount to the

victim at the first instance and then recover the said amount from the owner of the vehicle."

- * In 2007 (2) TLNJ 321 (SCI) [Ishwar Chandra & Others] it is held thus: "It has been further observed in the said case law that in case of violation of any condition in the Insurance policy, the insurer after satisfying the claim of the victim can recover the said amount from the insured viz., the owner of the vehicle to institute separate proceedings."
- * In 2008 (3) L.W.1104 SC [[National Insurance Co. Ltd., v. Geeta Bhat & Others](#)] it is held as under: "The driver of the offending vehicle has no driving licence at the time of the accident, then the insurance company is not liable to pay the compensation amount and however in the interest of justice, the insurance company has to pay the award amount at the first instance and then recover the same from the owner of the vehicle."
- * Gujarat High Court in [New India Insurance Company Ltd vs Arjanbhai Hansrajbhai Dawariya](#) on 11 March, 2022 held that Here, in the present case, there is no licence at all and as per the decision of Hon'ble Apex Court in case of [Swaran Singh & Ors.](#) (Supra) and other decisions, the insurance company cannot be held liable, as there is clear fundamental breach of terms of the insurance policy and in view of the provisions of [Sections 147 to 149](#) of the Motor Vehicles Act, 1988, the insurance company is required to be exonerated from its liability to pay the amount of compensation.
- * As per the decision in the case of [National Insurance Company Ltd. Vs. Swaran Singh & Ors.](#) reported in 2004 (1)

GLH 691 and [Mohmad Rafik Munnebai Ansari Vs. Gujarat State Road Transport Corp.](#) rendered in Civil Application No.801 of 2021 in First Appeal No.3173 of 2021 and [National Insurance Company Ltd. Vs. Bharatbhai Bhimjibhai Songara & Ors.](#) rendered in First Appeal No.2180 of 2012 where also, this Court has considered the case of [Swaran Singh, Mohmad Rafik Munnebai Ansari & Ors.](#) has found that if there is no valid and effective driving licence with the driver of the offending vehicle, then the insurance company is required to be exonerated from payment of compensation.

- * In 2009 (1)JCR 335, Tripurari Mandal -vs.- Oriental Insurance Company Ltd. it has been held that where the driver was not holding the valid license the Insurance Company is not liable for paying the compensation.
- * Gujarat High Court in the case of [New India Insurance Co. Ltd. Vs. Harishbhai Dayabhai Bharaniya](#) in R/First Appeal No.1909 of 2015, and had drawn conclusion that as the driver of the tort feisor was not holding any licence at all, the Insurance Company is required to be exonerated from its liability to pay the amount of compensation.
- * In case of [National Insurance Co Ltd vs Vidhyadhar Mahariwala](#) [2008 (12) SCC 701] wherein, it is held that [Section 173](#) of the M.V.Act - driver did not have valid licence on the date of occurrence. It is also held that the insurer will have no liability in that case the claimant can recover the amount from respondent No.2 and appeal was allowed.
- * In case of [Mahmad Rafik Munnebai Ansari vs. Gujarat](#)

State Road Transport Corporation [2021 LawSuit (Guj) 5064] it was held that 12. Thus, insurer would be entitled to raise a defense that driver of the offending vehicle was not possessing a valid driving license at the time of the accident and as such it is not entitled to indemnify the claim. If it is to be construed that burden was on the insurance company to prove that owner of the vehicle had consciously allowed the driver of the vehicle whom he knew, did not possess driving license, then in such circumstances also insurer would not be required to indemnify the award.

- (11) **In case on hand, it was proved from evidence that driver of offending vehicle as not having driving licence, therefore, it was clear breach of insurance contract and therefore, insurance company opponent No.3 is not liable to indemnify the owner.**
- (12) **Now the question is of the liability of opponent No.4. The insurance policy of deceased' vehicle was filed under Ex.24. The insurance company has accepted the premium for owner / driver and policy was package policy. In case on hand, the owner of the vehicle driven by the deceased was not joined as the party. The learned advocate of the insurance company opponent No.4 filed application under Ex.12 for exoneration of the insurance company denying the acceptance of the premium and denied the status of deceased as third party and relying on following decisions asked to exonerate him stating his own tort.**
- A. 2009 ACJ 998 SC**
 - B. 2009 ACJ 2020 SC**
 - C. 2008 ACJ 1441 SC**
 - D. SCA No.15533/2016 High Court of Gujarat**

E. F.A. 735/2016 High Court of Gujarat

F. F.A. 1353/2015 High Court of Gujarat

G. 2017 ACJ 1793 High Court of Gujarat

H. 2017 ACJ 1801 High Court of Gujarat

(13) In case on hand, as the policy was package policy and deceased was the driver and owner of the vehicle as well as the premium of Rs.360/- was accepted for the risk of owner / driver and liability of Rs.15,00,000/- was narrated in the policy itself, hence, contention of insurance company opponent No.4 is not accepted and its liability is decided only upto 15,00,000/-.

Age of the deceased :-

(14) Claimant side has filed the school leaving certificate of the deceased at Ex.29. The birth date of deceased was shown as 1/6/1972. Therefore, on the date of accident i.e. on Dtd.4/4/2021, he was of 49 years old.

Income of deceased :-

(15) Claimants stated the income of deceased as of Rs.30,000/- per month. The income tax return of the deceased was filed under Ex.30 to 32. Ex.31 was the Income Tax Return of AY 2018-19 i.e. FY 2017-18, which showed the annual income of deceased as of Rs.2,43,950/-. Ex.32 was the Income Tax Return of AY 2019-20 i.e. FY 2018-19, which showed the annual income of deceased as of Rs.2,44,850/-. Ex.33 was the Income Tax Return of AY 2020-11 i.e. FY 2019-20, which showed the annual income of deceased as of Rs.2,49,120/-. The average yearly income of the deceased should be considered as of Rs.2,45,000/- per year.

Calculation of Compensation

- (16) For the determination of compensation, the decision of Rajkumar is also helpful. Hon'ble Apex Court in para 13 held that "13. We may now summarise the principles discussed above : (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity. (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability). (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety. (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.
- (17) On considering the principles with the factual aspect of the case on hand following calculation is necessary for determination of compensation.

Sr. No.	Particulars	Calculation	Total amount
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1	Income of deceased	2,45,000/-	2,45,000/-
2	Dependent 5	i.e 1/4 deduction from income	61,250/-
3	Income after deduction		1,83,750/-
4	Age of deceased	49 years	Multiple-13
5	Income after application of multiplier		23,88,750/-
6	Future earnings on the base of self employed person	20%	4,77,750/-
7	Income after addition		28,66,500/-
9	Loss of estate		15,000/-
10	Loss of consortium	40,000/- * 5	2,00,000/-
11	Funeral expenses		15,000/-
12	Medical Expenses		0
13	Total amount of compensation		30,96,500/-
14	<u>Awarded amount</u>		30,97,000/-

(18) Thus, the answer of the issue No.1 to No.3 are given partly in affirmative against the opponent No.1 and No.2 and No.4 with the liability of payment of compensation worth of Rs.15,00,000/- fifteen lakhs only for opponent No.4 and opponent No.3 is exonerated from the liability of payment and the total amount of compensation is decided for Petition as mentioned in above table with interest @ 6% p.a. from the date of filing of the petition to till the realization of the amount.

Mode of Payment of Compensation :-

(19) It is the general view of this tribunal to award total compensation in cash payment to major claimant relying on decision of Hon'ble

High Court of Allahabad in case of National Insurance Co. Ltd. vs Smt. Anuradha Kejriwal And 4 decided on 13 April, 2021 passed in FIRST APPEAL FROM ORDER No. - 2103 of 2017 by Bench: Kaushal Jayendra Thaker, Ajit Singh reported in 2021 SCC OnLine All 269 and **Case no. – SLP (Crl.) No. 9264/2019 Case Title – The Law Association v. Director General Of Police Citation : 2024 LiveLaw (SC) 499.**

Share of Claimant :-

(20) No one is minor, hence, the tribunal is on the view to pay whole compensation amount in cash in following manner.

Sr. No.	Claimant	Disbursement of amount
1	1	40% in cash payment
2	2	15% in in cash payment
3	3	15% in in cash payment
4	4	15% in in cash payment
5	5	15% in in cash payment

Method of payment :-

(21) It is further opinion of this tribunal that as per the recent decision of Hon'ble Apex court in Bajaj Allianz General Insurance Company Private Ltd. vs. Union of India [WPC 534/2020] Coram: Justices Sanjay Kishan Kaul and MM Sundresh Citation : LL 2021 SC 662 and PARMINDER SINGH VERSUS HONEY GOYAL AND OTHERS **Citation : 2025 LiveLaw (SC) 318**, the payment method should be as possible as to easy to the claimant and immediate manner and directly in Bank Account of claimant, resultant, following final order is required to pass.

FINAL ORDER

1. The petitions is partly allowed with costs against opponent No.1 and No.2 and No.4 with the limited liability of payment of compensation worth of Rs.15,00,000/- fifteen lakhs only for opponent No.4 and opponent No.3 is exonerated from the liability of payment.
2. Opponents No.1 and No.2 and No.4 jointly and severally do pay the amount of compensation worth of Rs.30,97,000/- Thirty lakhs ninety seven thousand only but opponent No.4 will be liable to pay only amount of Rs.15,00,000/- and not any more amount with interest at the rate of 6% per annum, from the date of registration of claim to till the realization of the amount.
3. Opponents No.1 and No.2 and No.4 are ordered to deposit the amount of compensation within three month from the date of this order.
4. In case of failure of opponents in depositing the amount, the claimant shall be entitled for the execution of award as per the direction given by Hon'ble Supreme Court in **Case: Rahul S Shah vs. Jinendra Kumar Gandhi [CA 1659-1660 of 2021] Coram: CJI SA Bobde, Justices L. Nageswara Rao, S. Ravindra Bhat Counsel: Adv Shailesh Madiyal, Adv Paras Jain Citation: LL 2021 SC 230. If the applicant will apply for the attachment warrant of property or arrest warrant of the opponent then warrant shall be issued immediately on payment of necessary allowance.**

5. **Claimant shall be free to execute the award by the issuance of the certificate u/s. 174 of M. V. Act directing the Collector to recover the the same in the same manner as an arrears of land revenue.**
6. Opponents do pay cost of the claimants and also bear that of their own.
7. On depositing of the compensation by opponent, after deducting the court fee if any levied on claim, it shall be disbursed to claimants in following manner.

Sr. No.	Claimant	Disbursement of amount
1	1	40% in cash payment
2	2	15% in in cash payment
3	3	15% in in cash payment
4	4	15% in in cash payment
5	5	15% in in cash payment

8. Claimants are ordered to produced their information relating to bank account with the proof of first page of his passbook or bank statement having account number and IFSC Code as immediate manner.
9. There shall not be the necessity to file separate payment proceedings by the claimants or to pass separate payment order more over this order after depositing of amount by opponents.
10. If there is question before the Nazir Branch for the need of disbursement voucher, the branch shall be considered the payment advice filed by the opponent as the payment voucher and in case of having any need for institution of

application through the number for the record of court, MACP branch shall entered that voucher as the miscellaneous petition and after receiving it, shall send it for the payment to Nazir-branch.

11. The Branch is directed to send the payment yadi after referring all necessary particulars as desired by the Account Branch on receiving of payment advice without putting payment order before me for my signature. The copy of Pan Card and Copy of Bank Account filed by the claimant in present litigation, is ordered to be sent to with the yadi.
12. Madras High Court in case of M/S. Cholamandalam Ms Genl Ins Co Ltd vs Mr. Ayyannar S (Mcop No. 5259 Of 2019) decided on 11 May, 2020 passed in Tr.CMP.Nos. 264 to 271 of 2020 held that there is no provision for drawing of decree after the award passed by the tribunal and the same provision is also contained in Rule 233 of The Gujarat Motor Vehicles Rules 1989, therefore, there is no need to draw separate decree.

Pronounced in the open Tribunal today this 10th of March 2026.

Date: 10/3/2026
Place - Deesa

(Shilpa Mansukhlal Kanabar)
6th Additional District Judge
Motor Accidents Claim Tribunal (Auxi)
Banaskantha at Deesa
CODE - GJ00814

PROCEEDINGS

9/3/2026 10/3/2026	&	Matter was listed for the final judgment on 9/3/2026 but the staff was forgotten to give me and file was given me at evening and I was not able to conclude judgment on 9/3/2026, hence, the matter is relisted on 10/3/2026
52		Judgment declared today
		Disposed off accordingly

(Shilpa Mansukhlal Kanabar)
6th Additional District Judge
Motor Accidents Claim Tribunal (Auxiliary)
Banaskantha at Deesa
CODE - GJ00814